

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

BARON FINANCIAL CORPORATION,	*	
Plaintiff,	*	
v.	*	Civil Action No. MJG 03 CV 168
ERN, LLC	*	
Defendant	*	
* * * * *		
ERN, LLC	*	
3102 Lord Baltimore Drive, Suite 202	*	
Baltimore, Maryland 21244	*	
Third Party Plaintiff	*	
v.	*	
SAMUEL BUCHBINDER	*	
9801 Keeler Avenue		
Skokie, Illinois 60076	*	
and	*	
ABANCO INTERNATIONAL, LLC	*	
O'Hare International Center		
10255 West Higgins Road, Suite 500	*	
Rosemont , Illinois 60018	*	
Serve On	*	
Samuel Buchbinder	*	
9801 Keeler Avenue	*	
Skokie, Illinois 60076	*	
Third Party Defendants	*	
* * * * *		

**THIRD-PARTY COMPLAINT FOR BREACH OF CONTRACT AND  
TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS**

Defendant/Third Party-Plaintiff ERN, LLC, by its attorneys, Paul Mark Sandler, Robert B. Levin, Eric R. Harlan, Shapiro, Sher, Guinot & Sandler, sue Third Party Defendants Sam Buchbinder (“Buchbinder”) and Abanco International, LLC (“Abanco”), and states as follows:

**Parties and Jurisdiction**

1. Defendant/Third-Party Plaintiff ERN, LLC (“ERN”) is a Maryland limited liability company with its principal place of business in Baltimore, Maryland.
2. Third Party Defendant Sam Buchbinder is a citizen of the State of Illinois who regularly transacts business in the State of Maryland, and who has caused tortious injury in the State through acts and omissions committed both in and out of the State. Buchbinder has also consented to jurisdiction in this Court. (See ¶ 9, *infra*).
3. Third-Party Defendant Abanco International LLC (“Abanco”) is an Illinois limited liability company with its principal place of business in Rosemont, Illinois. Abanco is a payment processing company similar to ERN—and a direct competitor to ERN—that transacts business regularly in the State of Maryland. Abanco has also caused tortious injury in the State through acts and omissions committed both in and out of the State.
4. Abanco is also an entity financed, operated and controlled by Buchbinder or entities controlled by Buchbinder, and thus, Abanco is an alter ego of Buchbinder.
5. Subject matter jurisdiction in this Court is proper under 28 U.S.C. §§ 1332 and 1367.

**FACTS COMMON TO ALL COUNTS**

ERN restates and incorporates by reference herein the allegations made in its Answer, Counterclaim and Demand for Jury Trial, and in paragraphs 1 through 5 herein.

6. This litigation involves the electronic payment processing business—the industry that facilitates the orderly verification of consumer purchases by check, credit and debit card.

7. In relevant part, the industry functions as follows: At one end of each consumer transaction, the Point of Sale (“POS”), are the consumers buying goods and services and the merchants who sell them. At the other end of each transaction are merchant banks, or other entities, which receive the information provided from the swipe of a consumer’s credit/debit card or check, process the information, and inform the merchant whether to accept or decline the transaction. Between the Point of Sale and the Processor are any number of independent sales organizations (“ISO”s) that market the processing service on behalf of a given processor to any interested merchant.

8. Rony Natanzon, the principal of ERN, and Third-Party Defendant Sam Buchbinder, for many years have been participants in the industry. Prior to forming ERN, LLC, Natanzon was in business as an ISO for a payment processing company owned by Buchbinder, which Buchbinder eventually sold for a substantial profit. After Buchbinder sold his business, Natanzon approached him with an idea to form a hybrid company that would serve as a large ISO for a merchant bank on the one hand, and simultaneously function as an off-line check processing entity on the other. The two formed ERN, LLC, in which Buchbinder was a principal. Disputes that were at issue in prior litigation in this Court, Michelle Trading Company v. Rony Natanzon, Civil No. MJG-02-CV-1868 (“the Michelle Litigation”), resulted in Buchbinder relinquishing his interest in ERN pursuant to a settlement agreement between Natanzon and Buchbinder, on behalf of the parties to the Michelle Litigation.

9. Pursuant to the settlement agreements entered into as a result of the Michelle Litigation, copies of which are attached to the Plaintiff’s Complaint, Buchbinder agreed not to solicit any customers of ERN or any existing employees of ERN. In the electronic transaction industry, the term “customer”

includes ISOs. Buchbinder also agreed that this Court would have jurisdiction over disputes arising out of the parties' agreement.

10. On or about September 17, 2002, Dan Lewis ("Lewis"), acting as agent for Buchbinder and Abanco, within the scope of his authority, directly solicited numerous ERN customers (ISOs) and several current ERN employees, via electronic mail, to join forces with Buchbinder and his company, Abanco. (A copy of Lewis's e-mail solicitation is attached hereto as Exhibit 1). Upon information and belief, Buchbinder's and Abanco's efforts to solicit current customers and employees of ERN is ongoing.

COUNT I: BREACH OF CONTRACT

(ERN v. Buchbinder)

ERN restates and incorporates by reference the allegations contained in the foregoing paragraphs.

11. Under paragraph 3 of the MOU executed by Buchdinder in settlement of the Michelle Litigation, and in consideration for ERN permitting him form a competing business, Buchbinder agreed not to solicit customers or employees of ERN.

12. Despite the clear provisions of the MOU, Buchbinder, through his agent Dan Lewis, caused an e-mail to be sent to numerous customers (ISOs) and employees of ERN soliciting them to work for Buchbinder's competing company, Abanco.

13. Buchbinder continues to solicit ISOs and employees of ERN in violation of the MOU.

14. As a result of Buchbinder's breach of the MOU, ERN has sustained damages and will continue to sustain damages.

WHEREFORE, ERN, LLC prays the Court:

- A. Enter judgment against Sam Buchbinder in the amount of \$1,000,000.00 in compensatory damages;
- B. Award pre- and post-judgment interest, costs, and attorneys' fees ;
- C. Grant preliminary and permanent injunctive relief requiring Buchbinder to cease and desist from soliciting ERN's customers and employees; and
- D. Grant such other relief as may be just and proper.

COUNT II: INTENTIONAL INTERFERENCE WITH ECONOMIC INTERESTS

(ERN v. Buchbinder and Abanco)

ERN restates and incorporates by reference the allegations contained in the foregoing paragraphs.

15. With full knowledge, understanding and appreciation of the non-solicitation provision of the MOU, Buchbinder and Abanco, through their agent Dan Lewis, intentionally and improperly solicited ERN's customers and employees to join Abanco, a competitor to ERN.

16. Buchbinder and Abanco did so with the intent of harming ERN's economic and business interests.

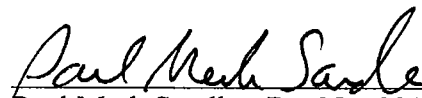
17. As a result of Buchbinder's and Abanco's intentional and tortious conduct, which was perpetrated with ill will, an evil motive, an intent to injure, and otherwise with actual malice, ERN has sustained and continues to sustain substantial monetary losses.

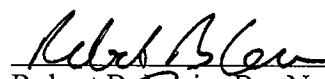
WHEREFORE, ERN, LLC prays the Court:

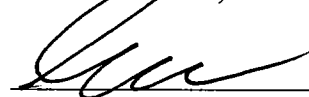
- A. Enter judgment against Sam Buchbinder and Abanco International, LLC in the amount of \$1,000,000.00 in compensatory damages;
- B. Enter judgment against Sam Buchbinder and Abanco International, LLC in the amount of \$5,000,000.00 in punitive damages;
- C. Award pre- and post-judgment interest, costs, and attorneys' fees ;
- D. Grant preliminary and permanent injunctive relief requiring Buchbinder to cease and desist from soliciting ERN's customers and employees; and
- E. Grant such other relief as may be just and proper.

DEMAND FOR JURY TRIAL

Third-Party Plaintiff ERN, LLC demands a trial by jury on all issues.

  
Paul Mark Sandler, Bar No. 00145

  
Robert B. Levin, Bar No. 00695

  
Eric R. Harlan, Bar No. 23492

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*Attorneys for Defendant/Counter-Plaintiff ERN, LLC*

**From:** "Marty Taylor" <MTaylor@nationwidechecksolutions.com>  
**To:** <rbl@shapirosher.com>  
**Date:** 2/27/03 4:05PM  
**Subject:** FW: "The Boys are Back at the ETA"

Here is the e-mail.

Martin A. Taylor  
VP Business and Product Development  
ERN-LLC, Nationwide  
410-701-2000 ext.4112  
mtaylor@nationwidechecksolutions.com  
www.nationwidechecksolutions.com

-----Original Message-----

From: Dan Lewis [mailto:dlewis@abanco.com]  
Sent: Tuesday, September 17, 2002 3:02 PM  
To: Bob Cochran; Lisa Osantowski; tonya@go-software.com;  
ssigmonbeason@atpos.com; jkemp@fnbaonline.com; tagillis@aol.com;  
cshook@1stnp.com; rj@4access-comm.com; tonya@4access-comm.com;  
ingrid@4access-comm.com; Tony Ashe; kevin@accessatm.com;  
david@accessatm.cc; dhooper@accessatm.cc; chris@accessatm.cc;  
mfisher@aql.com; steven@aql.com; sappel@adcom1.com;  
jboyar@imprinters.com; yduhaime@imprinters.com; lew@bartizan.com;  
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kfreedman@aol.com; rhometh@apriva.com; jleiser@apriva.com;  
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dalejones@atmreports.com; rbrooks@iauthorizer.com;  
akonwick@iauthorizer.com; wendy.lund@bthree.com;  
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linda.noble@bankcard-central.com; rwnoble@bankcard-central.com;  
tods@bankcard-central.com; donb@biopay.com; johnc@biopay.com;  
hhpark@bitel.co.kr; ccaskey@bbandt.com; mcurrin@bbandt.com;  
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 dhoch@neteps.com; bjones@neteps.com; Akong@neteps.com;  
 sleiter@neteps.com; creckert@efsnb.com; tony.sdao@logixco.com;  
 ksmith@neteps.com; mwidman@neteps.com;  
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 jlevine@cornerstonepaymentsystems.com;  
 mlind@cornerstonepaymentsystems.com;  
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 ayapkowitz@cornerstonepayments.com; burney.simpson@tfn.com;  
 gary@bankcard.net; jason@bankcard.net; mdees@creditranz.com;  
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 fdearmore@electracash.com; mhoffmeyer@electracash.com; fadi@ecsatm.com;  
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 greg.leos@globalpay.com; jsevern@techleasing.tv;  
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 bradj@go-software.com; mmabante@go-software.com; mandyo@gosoftware.com;  
 gwilcox@roicorporation.com; craig.ludwig@grsgroup.com;  
 ceasar@grsgroup.com; cfgray@cfgray.com; jkula@heartlandcard.com;  
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 cynthiah@humboldtbank.com; janetl@humboldtbank.com;  
 kenm@humboldtbank.com; jamies@humboldtbank.com; pwhittle@hypercom.com;  
 gzempich@hypercom.com; mzurliene@hypercom.com; terry@incubay.com;  
 gordon\_chan@inetco.com; geoff\_malange@inetco.com;  
 doug\_pearson@inetco.com; david\_soul@inetco.com; linh\_tsiu@inetco.com;  
 tony@ipcprint.com; jeff@ipcprint.com; tjochner@innovativemerchant.com;  
 jkaplan@innovativemerchant.com; mvaughn@innovativemerchant.com;

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david.campoy@intellect.be; jan.de.smet@intellect.be;  
francis.de.vrieze@intellect.be; jack.perveiler@intellect.be;  
diafrate@intlbankcard.com; gdaily@ipayments.com;  
joe.jorling@ipaymentinc.com; charlene.rice@ipaymentinc.com;  
jim@irnpayment.com; dino@irnpayment.com; ben@irnpayment.com;  
lentzjc@aol.com; linda.barth@jcbusa.com; nobu.matsuzaki@jcbusa.com;  
takashi.watanabe@jcbusa.com; alysha@jettis.com; jkenney@jettis.com;  
kjell@jettis.com; drich@jettis.com; ralakkam@jrposdepot.com;  
glay@jrposdepot.com; constance.dobaj@keybank.com;  
daniel\_neistadt@keybank.com; cbambrick@keycorp.net;  
pderosse@keycorp.net; gvos@keycorp.net; gerrygay@kryptosima.com;  
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barbsmike@aol.com; barbsmike@aol.com; ebraswell@link2gov.com;  
daq@fivepaces.com; lmkelley@lynksystems.com; bbermans@manatt.com;  
mike\_gardund@mastercard.com; jeff\_glazer@mastercard.com;  
gerald\_hubbard@mastercard.com; mike\_park@mastercard.com;  
connie\_pollak@mastercard.com; art\_roca@mastercard.com;  
daniel\_sommerschild@mastercard.com; les.falke@usa.net; rogero@mcms.biz;  
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phill@msiemail.com; ejodegard@earthlink.net; becky@mbs-us.com;  
kwright@deltacard.com; lnovacek@deltacard.com; msanati@deltacard.com;  
henry@merchantwarehouse.com; david@merchantwarehouse.com;  
ryan@merchantwarehouse.com; scott@merchantwarehouse.com;  
andrewb@merlinsolutions.com; tonyw@merlinsolutions.com;  
rick.lenz@metavante.com; tj.roche@metavante.com;  
jmayleben@retailers.com; ccreamer@midtrans.com; troy@miva.com;  
torry@mltassociates.com; jim.baumgartner@moneris.com;  
jeanine.jurasz@mail1.moneris.com; steve.maxwell@mail1.moneris.com;  
joan.mitchell@moneris.com; ron.rois@mail1.moneris.com;  
don.wegrzyn@mail1.moneris.com; keith.wilson@mail1.moneris.com;  
rose@moneytree1.com; chrisk@mosaicsoftware.com;  
kevinp@mosaicsoftware.com; krnikkel@multiservice.com; ronncpp@mtsl.com;  
dave@ndfc.com; nma@775.net; lamato@npc.net; ebarth@npc.net;  
dedelen@npc.net; jfeldman@npc.net; dfox@npc.net; dmiller@npc.net;  
dmiller@npc.net; cmcnulty@npc.net; mpyke@npc.com; grapp@npc.net;  
rsagar@npc.net; rwiley@npc.net; twimsett@npc.net;  
rnatanzon@nationwidecheckservices.com;  
dpurrio@nationwidecheckservices.com;  
mtaylor@nationwidecheckservices.com; bbennett@eftnet.com;  
dbergin@eftnet.com; rcarter@verusfm.com; ckennedy@eftnet.com;  
richroberts@verusfm.com; eseibels@verusfm.com; cshapero@eftnet.com;  
rsimoneaux\_home@yahoo.com; rsimoneaux\_home@yahoo.com; bwade@eftnet.com;  
mdunn@nmsasap.com; psabella@nextdayfunding.com;  
pnoblett@noblett-assoc.com; jsoto@noblett-assoc.com;  
mbecker@nabancard.com; mgardner@nabancard.com; mgorge@nabancard.com;  
cyancey@nabancard.com; sam.caine@novainfo.com; tom.cesario@novainfo.com;  
mary.dailey@novainfo.com; rene.gunn@novainfo.com;  
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 Subject: RE: "The Boys are Back at the ETA"

Dear Colleagues:

As many of you have already heard, I recently resigned as Vice President of CMS and assumed a position as Senior Vice President, Sales, for ABANCO, International, LLC. Although we may be a start-up company, ABANCO is currently able to provide you with all the products and services you desire to meet your merchants' processing needs.

I, of course, was anticipating attending the ETA and personally filling you in on all the details of what we have to offer but, to my deep regret, I find myself unable to join you due to a death in the family.

Therefore, while I won't be able to visit with all of you in person, I am definitely looking forward to hearing from you to renew existing relationships as well as building new ones with those of you I may not yet have personally met.

In the meantime, please visit with my associates, Bob Cochran, Senior Vice President, Sales, and Tony Ashe, Senior Vice President, Sales and Marketing. They will be very happy to fill you in about ABANCO.

I look forward to speaking with you after the ETA and catching up with you then.

Sincerely,

Dan Lewis

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